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Daily Insurance A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Insurance Australia Ltd t/as NRMA Insurance v Pate (NSWSC) - judicial review - motor accidents compensation - past and future economic loss - error by claims assessor - assessor's decision set aside

Cairncross v Anderson t/as ERA Legal (NSWSC) - pleadings - professional negligence - advocate's immunity - strike-out application adjourned awaiting High Court's determination of legal principles concerning advocate's immunity

Thiess Pty Ltd v Dobbins Contracting Pty Ltd (NSWSC) - negligence - contract - bailment - proportionate liability - fire destroyed excavator due to 'hot work' performed by defendants' employees - first defendant settled with plaintiff - second defendant not liable

Strauss v Bennett (NSWSC) - contract - claim for possession of land occupied by defendant - defendant failed to make out claim of unwritten agreement for sale to him of plaintiff's interest in land - plaintiff entitled to possession and damages - defendant entitled to restitution

BM Alliance Coal Operations Pty Ltd v BGC Contracting Pty Ltd (QSC) - pleadings - contract - application to strike out paragraphs of statement of claim or for provision of further particulars dismissed

Maio v City of Stirling [No 2] (WASCA) - contract - deed - dismissal of claim for easement for parking on land adjoining land registered in second respondent's name - appeal dismissed

Summaries With Link (Five Minute Read)

Insurance Australia Ltd t/as NRMA Insurance v Pate [2016] NSWSC 278

Supreme Court of New South Wales

Schmidt J

Judicial review - motor accidents compensation - claimant injured in car accident - NRMA was compulsory third party insurer of at fault vehicle - NRMA admitted liability - dispute between parties as to entitlement to compensation for past and future economic losses - NRMA sought pursuant to s69 *Supreme Court Act 1970* (NSW) to quash assessor's decision - NRMA contended assessor took irrelevant matters into account and failed to deal with issue concerning claimed loss of earnings from rabbit farming business - held: assessor failed to take relevant consideration into account - assessor did not adequately explain reasoning - assessor misunderstood NRMA's case - assessor failed to determine what NRMA put in issue - assessor's decision set aside.

[Insurance](#)

Cairncross v Anderson t/as ERA Legal [2016] NSWSC 258

Supreme Court of New South Wales

Button J

Pleadings - professional negligence - solicitors' duties - defendant sought to strike out plaintiff's amended statement of claim on basis claim was doomed to fail due to advocate's immunity - s 66 *Civil Procedure Act 2005* (NSW) (CPA) - s14 *Limitation Act 1969* (NSW) - s73 *Trade Practices Act 1974* (Cth) - held: Court concluded determination of motion should await determination by High Court of legal principles concerning immunity - matter adjourned pursuant to s66 CPA.

[Cairncross](#)

Thiess Pty Ltd v Dobbins Contracting Pty Ltd [2016] NSWSC 265

Supreme Court of New South Wales

McDougall J

Negligence - contract - bailment - proportionate liability - fire destroyed excavator used by second plaintiff - fire caused by 'hot work' carried out by first defendant's employee - second defendant's employee assisted first defendant's employee with the 'hot work' - second plaintiff claimed employees failed to exercise appropriate care and employers were liable - first defendant did not partake in proceedings due to settlement with plaintiffs - first plaintiff was lessee of excavator - plaintiffs claimed first plaintiff had subleased excavator to second plaintiff at time of accident - nature of precautions required to be taken in context of work performed - contributory negligence - s5B *Civil Liability Act 2002* (NSW) - held: plaintiff's case against second defendant failed - judgment for second defendant.

[Thiess](#)

Strauss v Bennett [2016] NSWSC 262

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Supreme Court of New South Wales

Darke J

Contract - agreements made between owners of 1/10 interest in land - plaintiff was registered proprietor of 1/10 interest in land - building works carried out on plaintiff's site - plaintiff's daughter and defendant husband lived on site - couple divorced - no property settlement - plaintiff sought possession against defendant - defendant claimed he occupied site pursuant to unwritten agreement for sale to him of plaintiff's interest - defendant sought specific performance - constructive trust - principal and agent - ratification - joint endeavour - held: defendant did not make out claims - plaintiff entitled to possession and damages - defendant entitled to restitution of amount paid pursuing alleged agreement.

[Strauss](#)

BM Alliance Coal Operations Pty Ltd v BGC Contracting Pty Ltd [2016] QSC 55

Supreme Court of Queensland

Mullins J

Pleadings - contract - plaintiff claimed damages for breach of contract for construction of dam and repudiation - defendant sought to strike out paragraphs of statement of claim or provision of further and better particulars - parties disputed which material facts must be pleaded - held: all material facts had been pleaded - further particulars refused - application dismissed.

[BM Alliance](#)

Maio v City of Stirling [No 2] [2016] WASCA 45

Court of Appeal of Western Australia

Martin CJ; Buss & Murphy JJA

Contract - deed - primary judge dismissed appellants' claim concerning alleged proprietary rights in nature of easement for parking on land adjoining land registered in second respondent's name - alleged easement arose pursuant to deed ('2010' deed) to which appellants were not party and which referred to earlier deed ('1983 deed') - appellant not party to 1983 deed - appellants contended they were entitled to enforce covenants in 1983 deed as adopted in 2010 deed or entitled to easement for use of 'Use Area' on lot - doctrine of lost modern grant - prescription - *Prescription Act 1832* (UK) - s11(2) *Property Law Act 1969* (WA) - ss7 & 24 *Town Planning and Development Act 1928* (WA) - s63A, 65(3) & 69 *Transfer of Land Act 1893* (WA) - held: grounds of appeal failed - appeal dismissed.

[Maio](#)

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